

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 202 of 1983

in

FIRST APPEAL No 611 of 1981

with

LETTERS PATENT APPEAL No 234 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MUMAN IBRAHIM SULEMAN SUNSARA

Versus

MUMAN RAHIM DAUD ALAD

Appearance:

1. LETTERS PATENT APPEAL No. 202 of 1983
MR SB VAKIL for Appellants
NOTICE SERVED for Respondent Nos. 1 to 3
MR B.Y.MANKAD, AGP for Respondent No. 4
2. LETTERS PATENT APPEAL No 234 of 1983
MR HB SHAH for Appellants
MR SB VAKIL for Respondent No. 1 & 2
MR B.Y.MANKAD, AGP for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 03/11/98

ORAL COMMON JUDGEMENT [PER : B.C. PATEL, J]

L.P.A. NO. 202/83 is preferred by the appellants of First Appeal No. 611/81 who were original defendants nos. 1 to 3 while LPA No. 234/83 is preferred by the original plaintiffs. Charity Commissioner is respondent no.4 in L.P.A.no.202/83 while

he is respondent no.3 in LPA No. 234/83. These appeals are preferred against the decision of the learned Single Judge dated 6.5.1983 by which the First Appeal was allowed setting aside the judgment and decree passed by the learned District Judge, Banaskantha at Palanpur in Trust Suit No. 1/76 granting prayer for framing the scheme and removal of trustees. Learned Single Judge allowed the appeal and the scheme framed by the ld. District Judge in Trust Suit No. 1/76 came to be set aside and the suit came to be dismissed. However, while allowing the appeal, observations were made by the learned Single Judge as under:-

" It is, therefore, clarified that it will be the duty of the trustees to permit the plaintiffs and other Shias to perform such rites and religious ceremonies and also others which do not offend the feelings of Sunnis. Balapir Chilla being trust property, it is the duty of the trustee to keep it in good condition. The trustees should also take steps to provide a suitable place to the Shia Mumans of the village to enable them to prepare Tajias."

It appears that respondent nos. 1 to 3 of LPA No. 202/83 representing Mumans of Shia sect of village Majadar have made their own separate arrangements for Madresa since about 1961 or so and they prepare Tajias in the said Madresa. They have also got registered their own separate trust of Shia Jafari Masayati Momin Jamat on 26.2.1985 i.e. subsequent to the judgment and decree dated 6.5.1983 in FA No. 611/81 Survey Nos. 15, 83,

84/1 and 84/2 of village Majadar and the house bearing Majadar Gram Panchayat property No. 254 are also entered as Trust Properties of the said trust. The aims and objects of this Trust are to run Madresa, to offer prayers, to preach and perform religious festivals. Thus, they have made their own separate arrangements except for burial ground of the dead bodies. As regards the burial ground, in the public trust known as "Masjid, Kabrastan and Balapir Chhilla, Majadar", the appellants and the respondents have amicably settled that the

Kabrastan of this Trust is to be used to bury dead bodies of the Mumans of village Majadar, irrespective of whether of Shia or Sunni sect. Respondents have, thus nothing to do with the properties of the Masjid and Balapir Chhilla except of Kabrastan of the trust known as "Masjid, Kabrastan and Balapir Chhilla, Majadar".

Parties have made submissions to the aforesaid effect in the settlement which is placed on record in both the matters. Learned AGP Mr. Mankad, after going through the settlement, states that he has no objection if the order is passed accordingly. It seems that with a view to maintain harmony and live in peace inter-se between the Mumans of Shia and Sunni Sects, the parties have compromised or arrived at a settlement as aforesaid and that respondents have no objection in both the appeals to set aside the observations made in the judgment and decree passed in FA No. 611/81. In both the LPAs, the appellants have stated that they have no reasons to proceed with the appeals in view of the arrangements made by the parties which are referred to in paras 2 & 3 of the settlement.

It is required to be noted that the parties were present before the Court on 13.8.1997 as reflected in the order passed by the Division Bench on 13.8.1997 and they have accepted the settlement. The parties have signed the settlement. In view of what is stated herein above, the judgment and decree stands modified to the aforesaid extent viz. the observations made in the judgment and decree passed in FA NO. 611/81 are quashed and set aside and judgment and decree stands modified in terms of settlement. These LPAs are disposed of accordingly.

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